Spirit Mountain Farms, Inc. and Donald R. Brown, I. Lois Brown, and Marilyn E. Brown, Executor of the Estate of Robert H. Brown, deceased, a Limited Partnership, d/b/a Spirit Mountain Farms and Martin Hitt. Case 28-CA-6527

January 8, 1982

DECISION AND ORDER

By Members Jenkins, Zimmerman, and Hunter

Upon a charge filed on June 29, 1981, by Martin Hitt, an individual, and duly served on Spirit Mountain Farms, Inc., herein individually called Respondent Corporation and Donald R. Brown, I. Lois Brown, and Marilyn E. Brown, executor of the estate of Robert H. Brown, deceased, a limited partnership, herein individually called Respondent Partnership, d/b/a Spirit Mountain Farms, herein collectively called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 28, issued a complaint on July 23, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

The charge was filed on June 29, 1981, by the Charging Party, and duly served on Respondent by certified mail on or about the same day. The Acting Regional Director on July 23, 1981, issued a complaint and notice of hearing, which was received and signed for by Donald Brown on July 31, 1981. When no answer was filed, counsel for the General Counsel on August 13, 1981, sent, by ordinary mail, a letter advising Respondent that it had failed to timely file an answer to the complaint as required by the Board's Rules and Regulations and further informing Respondent of the consequences of its failure to timely file an answer thereto, namely, that such would have the effect of admitting each and every allegation in the complaint.

On August 31, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment on the pleadings. Subsequently, on September 8, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. Respondent has not filed a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides, inter alia: "All allegations in the complaint, if no answer is filed . . . shall be deemed to be admitted to be true and shall be so found by the Board." As set forth above, Respondent has not filed an answer to the complaint; the time within which to file having passed, we find all allegations in the complaint to be true. There being no issues in dispute, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

1. At all times material herein, Respondent Corporation and Respondent Partnership have been affiliated business enterprises with common officers, ownership, directors, management, and supervison; have formulated and administered a common labor policy affecting employees of said operations; have shared common premises and facilities; have provided services for each other; have interchanged personnel with each other; and have held themselves out to the public as a single integrated business enterprise.

We find, on the basis of the foregoing, that Respondent Corporation and Respondent Partnership constitute a single integrated business enterprise and a single employer within the meaning of Act.

2. At all times material herein, Respondent, with an office and place of business in Mohave Valley, Arizona, has been engaged in the business of producing, packaging, and selling fibre, grain, grass, fruit, and related products, including melons, and has packaged and sold melons which were produced by Respondent and other agricultural producers. During the past 12 months, Respondent in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and sold and shipped from its Mohave Valley, Arizona, facilities products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Arizona.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and

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that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Fresh Fruit and Vegetable Workers Local P-78-B, United Food and Commercial Workers, AFL-CIO, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

On or about June 23, 1981, Respondent discharged Charging Party Martin Hitt and, since that date, has failed and refused to reinstate him to his former position of employment. Respondent engaged in the acts and conduct described above because Martin Hitt refused to join the Union and to authorize Respondent to deduct periodic dues and initiation fees from his wages on behalf of the Union and in order to encourage employees to engage in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

On the basis of the foregoing, we find that Respondent has discriminated, and is continuing to discriminate, in regard to hire, tenure, or terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

We shall order that Respondent offer Martin Hitt immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. Moreover, we shall order that Respondent make him whole, with interest, for any loss of earnings he may have suffered as a consequence of the discrimination against him by payment to him of a sum equal to what he would have earned, less net earnings, to be computed in the manner prescribed in F. W. Woolworth Company, 90 NLRB 289 (1950). Interest on the backpay shall be computed as set forth in Florida Steel Corporation, 231 NLRB 651 (1977).²

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

- 1. Spirit Mountain Farms, Inc., and Donald R. Brown, I. Lois Brown, and Marilyn E. Brown, executor of the estate of Robert H. Brown, deceased, a limited partnership, d/b/a Spirit Mountain Farms, constitute a single integrated business enterprise and a single employer within the meaning of the Act.
- 2. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 3. Fresh Fruit and Vegetable Workers Local P-78-B, United Food and Commercial Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 4. Respondent, by discharging Martin Hitt and by failing and refusing to reinstate him to his former position of employment, has discriminated against employees in order to encourage union membership and activities, in violation of Section 8(a)(3) and (1) of the Act.
- 5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Spirit Mountain Farms, Inc., and Donald R. Brown, I. Lois Brown, and Marilyn E. Brown, executor of the estate of Robert H. Brown, deceased, a limited partnership, d/b/a Spirit Mountain Farms, Mohave Valley, Arizona, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

¹ The record indicates that Respondent is engaged, inter alia, in the business of packaging and selling melons produced by other agricultural producers. Accordingly, in the absence of evidence to the contrary, we find that Charging Party Hitt is an employee within the meaning of the Act. Employer Members of Grower-Shipper Vegetable Association of Central California, et al., 230 NLRB 1011 (1977).

² See, generally, Isis Plumbing & Heating Co., 138 NLRB 116 (1962). In accordance with his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

- (a) Discharging or otherwise discriminating against employees because they have refused to join Fresh Fruit and Vegetable Workers Local P-78-B, United Food and Commercial Workers, AFL-CIO, and have refused to authorize Respondent to deduct periodic dues and initiation fees from their wages on behalf of the Union, in order to encourage union activities or membership.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action designed to effectuate the policies of the Act:
- (a) Offer Martin Hitt immediate and full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole, with interest, for any loss of earnings he may have suffered as a result of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy."
- (b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Post at its facility in Mohave Valley, Arizona, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 28, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.
- (f) Notify the Regional Director for Region 28, in writing, within 20 days from the date of this

Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against employees because they have refused to join Fresh Fruit and Vegetable Workers Local P-78-B, United Food and Commercial Workers, AFL-CIO, and have refused to authorize us to deduct periodic dues and initiation fees from their wages on behalf of the Union, in order to encourage union membership or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Martin Hitt immediate and full reinstatement to his former position or, if his position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings he may have suffered due to the discrimination practiced against him, with interest.

SPIRIT MOUNTAIN FARMS, INC., AND DONALD R. BROWN, I. LOIS BROWN, AND MARILYN E. BROWN, EXECUTOR OF THE ESTATE OF ROBERT H. BROWN, DECEASED, A LIMITED PARTNERSHIP, D/B/A SPIRIT MOUNTAIN FARMS

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."